

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3629

United States of America,

Appellee,

v.

Gary Duane Schultz,

Appellant.

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Appeal from the United States

District Court for the

District of Minnesota.

[UNPUBLISHED]

Submitted: May 16, 2003

Filed: May 23, 2003

Before WOLLMAN, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

Gary Duane Schultz pleaded guilty to mail fraud and money laundering, in violation of 18 U.S.C. §§ 1341 and 1957, after he admitted that he used his executive positions at Lund Boats to defraud the company of more than \$14,000,000. At sentencing, the district court¹ applied a 4-level enhancement under U.S.S.G. § 2F1.1(b)(8)(B) (2000), specifically finding that Shultz's conduct "affected"

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota.

financial institutions--namely, Farmers and Merchants State Bank (F&M) and Dain Rauscher Investment Services (Dain)--because Lund Boats had filed a lawsuit against them in an attempt to recover money taken by Schultz. The court sentenced Schultz to concurrent terms of 63 months imprisonment. He appeals, arguing that the court should not have applied the enhancement because F&M and Dain had not lost money in the as-yet undecided civil lawsuit, and were neither victimized nor directly affected by the offense.

Upon our de novo review, see United States v. Collins, 104 F.3d 143, 144 (8th Cir. 1997), we believe that the district court properly applied the enhancement. It is undisputed that Lund Boat's civil lawsuit against F&M and Dain resulted from the fraud, and the lawsuit appears to have realistically exposed them to substantial potential liability and legal expenses. See United States v. Schinnell, 80 F.3d 1064, 1069-70 (5th Cir. 1996) (fraud perpetrated against customer of financial institution affected that institution where fraud "realistically exposed [it] to substantial potential liability"); see also United States v. Johnson, 130 F.3d 1352, 1355 (9th Cir. 1997) (fraud "affected" bank where bank suffered unreimbursed financial losses, including legal expenses).

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.